

REMARKS

In the request for continued examination of the present application, pending claims 11-18 are allowed and claims 19-27 stand rejected.

Previously submitted claim 19 was rejected under 35 U.S.C. § 102(b) as being anticipated by Apps et al. (U.S. Patent No. 6,006,677) and Gronnevik (U.S. Patent No. 5,845,588). Previously submitted claim 22 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Gronnevik. Previously submitted claims 20, 21, and 23-27 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Gronnevik in view of Ford et al. (U.S. Patent No. 6,228,914). The examiner also notes that interferences were made between allowed claims and that the claims in question were rejected on art.

Regarding the rejection of claim 19 as being anticipated by Apps et al. or Gronnevik, neither reference discloses nor suggests all of the elements of claim 19 because neither reference discloses a fire resistant layer formed on the outer surface of a pallet.

Apps et al. has been reviewed and, as understood, discloses a plastic pallet having an anti-slip layer that is provided by scuffing the outer surface. Apps et al. does not disclose or suggest a fire resistant layer.

Gronnevik has been reviewed and, as understood, discloses a multi-layer structure in which a polyolefin material is coated with an anti-slip layer of EVA or EBA. See column 5, lines 54-55. Gronnevik does not disclose or suggest a fire resistant layer.

Since neither Apps et al. nor Gronnevik discloses or suggests a fire resistant layer, the examiner has invoked the inherency doctrine to assert erroneously that "any plastics provide a fire resistant layer (plastics inherently provide fire resistance)." Office action at 2. However, the evidence of record does not support the examiner's assertion, as indicated by the attached Declaration by Dr. Ernest A. Coleman. See Coleman Dec. ¶¶ 12-19.

Indeed, the Declaration indicates that at least one of the references, the McGrath reference, directly contradicts the examiner's position. Coleman Dec. ¶ 14. The Declaration also indicates that the McGrath reference refers to "fire safe" polymers, not "fire resistant" plastics, and that the term "fire safe" has a very specific definition to a person of ordinary skill in the art. See Coleman Dec. ¶ 15. Accordingly, the Declaration establishes that the McGrath reference does not support the examiner's contention that all plastics provide fire resistance.

The Declaration also indicates that the Vinyl Institute reference would be of limited value to a person of ordinary skill in the art because it relies upon ASTM standards, which include the following disclaimer:

"This standard should be used to measure and describe the fire response of materials, products, or assemblies to heat and flame under controlled laboratory conditions and should not be used to describe or appraise the fire-hazard or fire risk of materials, products, or assemblies under actual fire conditions. However, results of this test may be used as elements of a fire-hazard assessment or a fire risk assessment which takes into account all of the factors which are pertinent to an assessment of the fire hazard or fire-risk of a particular end use."

Coleman Dec. ¶ 18 (citing Annual Book of ASTM Standards 2006, Vol.

8.01, D 2843 p. 714 ¶ 1.4). Accordingly, the Declaration indicates that there is no support in the record for the examiner's assertion that Apps et al. and/or Gronnevik inherently disclose fire resistant layers.

The Declaration also indicates that the problems that are addressed in Gronnevik (i.e. plastic pallets that have an outer surface with a low coefficient of friction) are unrelated to the inherent lack of fire resistance of plastic materials. See Coleman Dec. ¶ 22.

Applicant further submits that Gronnevik does not teach or suggest all of the limitations of claim 22 because Gronnevik does not teach or suggest a fire resistant layer formed on the outer surface of a pallet. Accordingly, the rejection of claim 22 for obviousness over Gronnevik should not stand for the reasons set forth above.

Regarding the examiner's rejection of claims 20-21 and 23-27 over Gronnevik in view of Ford et al., Ford et al. has been reviewed and, as understood, discloses an aqueous intumescent composition that is applied by conventional coating methods, such as spraying, dipping, drawing, and brushing. See Ford et al., col. 12, lines 1-8. Ford et al. does not teach or suggest that the disclosed intumescent composition can be co-extruded with a polyolefin base material.

Indeed, the Coleman Declaration indicates that Gronnevik cannot be combined with Ford et al. because Ford et al.:

discloses an aqueous intumescent composition, which is not suitable for melt processing in a co-extrusion process. As a result, a person of ordinary skill in the art is unlikely to combine the Gronnevik patent

with the Ford patent to produce a polyolefin patent having an intumescent layer through a co-extrusion process. The Ford coating is not formulated for compatibility with polymer melts; it is a coating that is formulated to bond to rough surface materials as described in the examples. The coating is applied to an existing surface. This Ford coating is a thermoset polymer that cannot be melt processed once it is heated to the curing temperature. Thus, it is totally unsuitable for extrusion or co-extrusion.

Coleman Dec. ¶ 24. Accordingly, Gronnevik and Ford et al. cannot be combined to render claims 20-21 and 23-27 obvious.

Applicant further submits that claim 22 includes the limitations of claim 20, so that the above reasoning with respect to claims 20-21 and 23-27 applies to claim 22, as well.

Applicant also notes that claim 19 of the instant application interferes with claim 14 of U.S. Patent No. 6,758,148 by Torrey et al. The relevant statute indicates that a claim that is directed to the same or substantially the same subject matter of a claim in an issued patent may not be made more than one year after the issuance of that patent. 35 U.S.C. § 135(b)(1). Accordingly, an interference must be declared between claim 19 of the instant application and claim 14 of Torrey et al. for the reasons set forth in Applicant's December 1, 2006 Office action.

Applicant further submits that the instant claims are genus claims to the patentably distinct species claims disclosed in U.S. Patent Application No. 10/890,351 by Abu-Isa et al. Claims 1, 2, 4, 6-9, and 13-16 of Abu-Isa et al. were allowed on October 3, 2006.

The Abu-Isa et al. application was filed on July 13, 2004, so that Applicant would have been the senior party in any

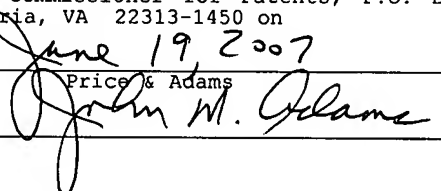
interference declared between the Abu-Isa et al. application and the instant application. However, the Abu-Isa et al. application was expressly abandoned on November 5, 2006.

A petition for a one-month extension of time is enclosed. Small entity status is still proper and desired. Check nos. 1028 and 1029 in the amounts of \$395.00 and \$60.00, respectively, are submitted herewith for payment of the RCE fee and the extension fee.

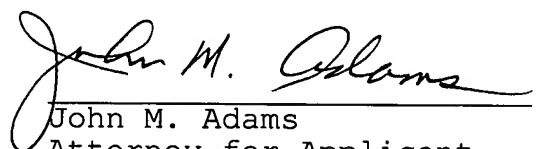
The amendment does not include new matter.

The rejections under 35 U.S.C. § 102(b) and 35 U.S.C. § 103(a) have been traversed and claims 11-27 are in condition for allowance. Accordingly, in view of the above amendments, explanations, and remarks, reconsideration and allowance of claims 11-27, as amended, is respectfully requested.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on

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